

REMARKS

Reconsideration of the pending application is respectfully requested in view of the foregoing amendments and the following remarks.

Status of the Application

Claims 1-24 are currently pending, with certain claims being amended to more clearly describe the subject matter Applicants consider to be their invention. As the amended claims are fully supported by the application as filed, no new matter has been introduced into the application by way of these amendments.

Summary of the Office Action

The Office Action of February 5, 2007, advises that claims 1-24 are subject to restriction and election requirements.

Specifically, and with regard to the restriction requirement, claims 1-10 and 18-23 are said to constitute Group I (various metal chalcogenide products); claims 11-17 are said to constitute Group II (a process for making a dispersion); and claim 24 is said to constitute Group III (a process for using a metal chalcogenide). It is alleged that each of the inventions described therein are distinct relative to each other.

Applicants respectfully traverse the restriction requirement. There are two criteria for a proper requirement for restriction between patentably distinct inventions: (i) the inventions must be independent and distinct as claimed, and (ii) there must be a serious burden on the Examiner if restriction is not required. M.P.E.P. § 803. Consequently, as set forth in M.P.E.P. § 803: "If the search and examination of all the claims in an entire application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to distinct or independent inventions."

In addition, even if related species are shown to be distinct under the criteria of M.P.E.P. § 806.05 (c)-(i), "the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required ... [and] must show by appropriate explanation one of the following: (1) separate

classification thereof ... (2) a separate status in the art when they are classifiable together ... (3) a different field of search.” M.P.E.P. § 808.02.

Here, the Office has not set forth reasons which are sufficient to establish the alleged “serious burden” on the Examiner if restriction or election of species is not required. Although the inventions of Groups I-III may be patentably distinct, Applicants submit that the Examiner would not be unduly burdened in his search for prior art relevant to each group due to the overlapping nature of the subject matter claimed therein (e.g., metal chalcogenide composite nano-particles comprising a metal capable of forming p-type semiconducting chalcogenide nano-particles and a metal capable of forming n-type semiconducting chalcogenide nano-particles, wherein at least one of said metal chalcogenides has a band-gap between 1.0 and 2.9 eV and the concentration of said metal capable of forming p-type semiconducting chalcogenide nano-particles is at least 5 atomic percent of said metal and is less than 50 atomic percent of said metal). Such a search under these circumstances should not be deemed unduly burdensome. For these reasons, withdrawal of the restriction requirement is respectfully requested.

If the restriction entered in the Office Action is made final, however, Applicants provisionally elect the claims of Group I (claims 1-10 and 18-23) for prosecution at this time.

Turning to the election of species requirement, the Office Action advises that an election of a single species from the following is required: a metal chalcogenide composite nano-particle (claims 2-9); a dispersion (claim 10); a layer (claims 18-22); and a photovoltaic device (claim 23). In this regard, Applicants elect the metal chalcogenide composite nano-particle. Claims 1-9 are generic.

Should the examiner have any questions regarding this response, he is invited to contact the undersigned attorney at his convenience.

Conclusion

As Applicant believes the application is in proper condition for allowance, the examiner is respectfully requested to pass the application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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